In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 274

BERNARD J. KORZEN, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, ET AL., PETITIONERS

v.

FORD MOTOR COMPANY AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

MEMORANDUM FOR FORD MOTOR COMPANY AND THE UNITED STATES

The facts of this case are fully set out in the opinion of the Illinois Supreme Court (Pet. 18–26). Illinois authorizes an *ad valorem* tax on personal property for which the "owner" is made liable. *Id.* at 22. "Property of the United States" is declared exempt from taxation. *Ibid.* Ford Motor Company possesses and uses property belonging to the United States under contractual arrangements substantially the same as those involved in *City of Detroit* v. *Murray Corp. of America*, 355 U.S. 489. Ford brought the present case in the Illinois State courts, seeking to enjoin the petitioners from attempting to impose the Illinois

741-159—64

personal property tax upon the property owned by the United States.

The Illinois Supreme Court recognized the power of a State legislature to impose a tax upon either a private party's use of government property or a private party's possession of such property. *Id.* at 25–26. It held, however (*id.* at 22, 24), that the Illinois tax was not imposed on these rights (which were enjoyed by Ford) but rather on the more basic rights which, under the Illinois statute, constitute "ownership." The taxed rights of "ownership," the court held flatly, were retained by the United States.[1] On the basis of this determination of the incidence of the State tax, the Illinois Supreme Court could reach only the conclusions it did: (1) "that the present tax is * * * a direct tax upon the property of the United States"; and (2) that "*McCulloch* v. *Maryland*, 4 Wheat. 316, * * * still retains sufficient vitality to prevent a State from levying a direct tax upon the property of the United States without the consent of Congress." *Id.* at 26.

[1] It quoted from *Martin Co.* v. *State Tax Com.*, 225 Md. 404, 419–420:

"Ownership is often spoken of as a bundle of rights. Certainly, rights to possess and to use property are important parts of the bundle, but plainly they may be transferred by the owner to another without divesting himself of ownership. * * *"

Applying this to the case before it, the Illinois Supreme Court held (Pet. 25): "We consider the ownership of the Federal government to be real and substantial, although it has given to the contractor some of the bundle of rights of ownership for a specific purpose."

There is no reason for further review of this decision. The petition should be denied.

Respectfully submitted.

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